COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 758 of 2001

U.P.S.R.T.C. through its
Regional Manager Tanakpur. … **Appellant.**

Versus

Smt. Geeta Sanwal and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(in short the Act)*** against the judgment and Award, dated 27-4-2001, passed in Case No. W.C.A. 7 of 1997, Smt. Geeta Sanwal & others Vs. U.P.S.R.T.C. and another, by the Workmen Compensation Commissioner & Asstt. Labour Commissioner Kumaun Region, Haldwani ***(hereinafter referred to as the Commissioner),*** whereby the learned Commissioner has awarded a sum of Rs. 1,89,560/- along with 12% per annum simple interest, i.e. Rs. 1,21,315/-/- (total Rs. 3,10,875/-) in favour of the claimant-respondents with certain directions, as against the Opposite Party No. 1-appellant. Aggrieved, the U.P.S.R.T.C.-appellant has come up in appeal and the substantial question of law involved in the appeal is that the case under appeal was barred by time and with a prayer to set aside the impugned judgment and award and has assailed the impugned judgment and award contending that the finding on income of the deceased is not based on evidence on record.

Brief facts of the case are that the claimant Geeta Sanwal has filed a claim petition before the learned Commissioner against the appellant with the allegations that her husband Ashok Sanwal ***(the deceased)*** was working in the employment of the O.P. U.P.S.R.T.C. as cleaner and he has died in the course of his employment due to accident on 11.12.1995. The deceased was aged

38 years, 4 months at the time of his death. It has been mentioned in the petition that W.C.A. Case No. 18 of 1996 was filed by the claimant earlier, which was withdrawn by the claimant as her mental condition was not fit and on account of compulsion on the part of the employer.

The Opposite Party-appellant has contested the claim petition by filing its written statement. The O.P. has admitted that the deceased has died in the course of his employment. It has been pleaded that the deceased was paid Rs. 940/- as basis salary. After the death, the claimant is getting basic pension of Rs. 750/- and the relief admissible as per Rules, therefore, the claimant has not suffered any loss towards loss of income. Hence the claimant is not entitled to any compensation. It has further been asserted that the earlier petition No. 18 of 1996 has been withdrawn on the basis of compromise between the parties, therefore, the present petition for compensation is not maintainable in the eye of law.

The claimant has filed reply stating therein that she is the widow of the deceased and she is natural guardian of the children, therefore, the claim petition is legally maintainable and that the claimant because of her mental frustration and due to compulsion on the part of the appellant, she had withdrawn the petition on the pretext that she will file the same in due course. It has been stated that no compromise has arrived at between the parties.

Besides filing documents regarding lodging of F.I.R., Post Mortem Report, death certificate, pay slips etc. the claimant Geeta Sanwal has examined herself on oath. On the other hand the Opposite Party has filed original pay slips of the deceased and has also produced Sri B.S.Bhatnagar, A.R.M., UPSRTC, Tanakpur.

After considering the entire material on record, the learned Commissioner has come to the conclusion that the bar of jurisdiction of the court and the maintainability of this petition has

already been decided vide order dated 7-10-1998 and no appeal, etc. was preferred by the Opposite Party against the said order. It has been observed that on the age of the deceased and his pay being above Rs. 2,000-, there is not dispute between the parties. The learned Commissioner has held that the deceased has died in the course of his employment, therefore, the dependents of the deceased are entitled to get compensation. Ultimately, the claim petition was allowed for compensation of Rs. 1,89,560/- along with interest as mentioned earlier.

We have heard Sri Amar Nath Sharma, learned counsel for the appellant as well as Sri G.B. Pande, learned counsel for the claimant-respondent and have carefully gone through the entire material on record including the impugned and award.

The main argument advanced on behalf of the appellant is that the claimant had filed a claim petition which was registered as W.C.A. No. 18 of 1996, which was withdrawn by her and the matter was compromised between the appellant and the clamant, therefore, the present claim petition was barred by limitation, therefore, it has been submitted that on this ground alone the appeal is liable to be allowed. We are unable to accept the contention of the learned counsel for the appellant for the reason that from a bare perusal of the record of Court below it is apparent that the Tribunal has passed separate order on 7-10-1998 on the preliminary Issues framed in this case, namely, ***Whether the claimant has withdrawn her petition dated 9-8-96 W.C.A. No. 18/96 on account of compromise between the parties duly accepted by the court? If so, its effect?*** and ***Whether the claimant on account of withdrawal of W.C.A. No. 18-96 on the basis of compromise between the parties is not legally entitled to maintain the present petition? If so, its effect?*** The learned Commissioner, while disposing of these two preliminary issues has discussed the entire material on record. Moreover, the appellant has specially pleaded that the earlier claim petition was withdrawn on account of compromise between the claimant and the

employer, but the appellant has nowhere disclosed as to what compromise was arrived at between the parties. Had there been any substantial compromise between the parties, the appellant must have given the details of the compromise showing the amount on which the alleged compromise was arrived at. We also find that after passing of the order dated 7-10-1998, the O.P.-appellant has participated in the proceedings of the case before the Commissioner. It is very well in the knowledge of the appellant that order dated 7-10-1998 has been passed by the Commissioner on the point of maintainability of present claim petition. The impugned judgment and award has been passed on 27.4.2001 , i.e. about 2,1/2 years of the order dated 7-10-1998. If the O.P.-appellant was aggrieved by the finding of the Commissioner recorded on 7-10-1998, the appellant would have challenged the finding dated 7-10-1998 before this Court. It has not been disputed that the finding dated 7-10-1998 are binding on the parties. Learned counsel could not explain to us as why the appellant has not chosen to avail proper remedy, rather chose to participate in further proceedings before the learned lower court. These are very strong circumstances against the appellant. We have no option but to decline the contention of the learned counsel for the appellant in the circumstances aforementioned.

So far as the salary of Rs. 4,446/- per month of the deceased and loss of income is concerned, it has been submitted that the claimant-respondent is getting adequate pension from the department-employer, therefore, she cannot claim compensation for the death of the deceased. This submission has no force. The entitlement of pension etc. is not be subject matter of the Act, but it is governed under the service conditions. Nothing has been shown to us to hold otherwise in this appeal.

No other point was urged or argued before us.

Ultimately, the appeal is devoid of merit and must fail.

Accordingly, the appeal is dismissed. The judgment and order, under appeal, is upheld. No order as to costs.

The amount, if any, deposited with this Court be remitted to the Workmen Commissioner concerned, for being paid to the claimants.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP